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REFERRAL SERVICES

Business & Professions Code Sections 650-651

Article 6. Unearned Rebates, Refunds and Discounts

650. Consideration for referral of patients, clients, or customers; violations; penalty.

Except as provided in Chapter 2.3 (commencing with Section 1400) of Division 2 of the Health and Safety Code, the offer, delivery, receipt, or acceptance by any person licensed under this division of any rebate, refund, commission, preference, patronage dividend, discount, or other consideration, whether in the form of money or otherwise, any compensation or inducement for referring patients, clients or customers to any person, irrespective of any membership, proprietary interest or co-ownership in or with any person to whom these patients, clients or customers are referred is unlawful.

650.2. Group Advertising and Referral Service Conditions; authorization for regulations

Notwithstanding Section 650 or any other provision of law, it shall not be unlawful for a person licensed pursuant to Chapter 4 (commencing with Section 1600) of Division 2 or any other person, to participate in or operate a group advertising and referral service for dentists if all of the following conditions are met:

- (a) The patient referrals by the service result from patient-initiated responses to service advertising.
- (b) The service advertises, if at all, in conformity with Section 651 and subdivisions (I) and (I) of Section 1680.
- (c) The service does not employ a solicitor with the meaning of subdivision (j) of Section 1680.
- (d) The service does not impose a fee on the member dentists dependent upon the number of referrals or amount of professional fees paid by the patient to the dentist.
- (e) Participating dentists charge no more than their usual and customary fees to any patient referred.
- (f) The service registers with the Board of Dental Examiners of California, providing its name and address.
- (g) The service files with the Board of Dental Examiners of California a copy of the standard form contract that regulates its relationship with member dentists, which contract shall be confidential and not open to public inspection.
- (h) If more than 50 percent of its referrals are made to one individual, association, partnership, corporation, or group of three or more dentists, the service discloses that fact in all public communications, including, but not limited to, communication by means of television, radio, motion picture, newspaper, book, or list or directory of healing arts practitioners.
- (i) When member dentists pay any fee to the service, any advertisement by the service shall clearly and conspicuously disclose that fact by including a statement as follows: "Paid for by participating dentists." In the print advertisement, the required statement shall be in at least 9-point type. In radio advertisements, the required statement shall be articulated so as to be clearly

audible and understandable by the radio audience. In television advertisements, the required statement shall be either clearly audible and understandable to the television audience, or displayed in a written form that remains clearly visible for at least five seconds to the television audience. This subdivision shall be operative on and after July 1, 1994.

The Board of Dental Examiners of California may suspend or revoke the registration of any service that fails to comply with the requirements of subdivision (i).

No service may re-register with the Board if it has a registration that is currently under suspension for a violation of subdivision (i) nor may a service re-register with the board if it had a registration revoked by the Board for a violation of subdivision (i) less than one year after that revocation.

The Board of Dental Examiners of California may petition the superior court of any county for the issuance of an injunction restraining any conduct which constitutes a violation of this section.

It is unlawful and shall constitute a misdemeanor for a person to operate a group advertising an referral service for dentists without providing its name and address to the Board of Dental Examiners of California.

It is the intent of the Legislature in enacting this section not to otherwise affect the prohibitions provided in Section 650. The Legislature intends to allow the pooling of resources by dentists for the purposes of advertising.

This section shall not be construed in any manner which would authorize a referral service to engage in the practice of dentistry.

651. Public communication containing false, fraudulent, misleading or deceptive statement or claim, prohibition, definitions; Advertisement.

(a) It is unlawful for any person licensed under this division or under any initiative act referred to in this division to disseminate or cause to be disseminated, any form of public communication containing a false, fraudulent, misleading, or deceptive statement or claim for the purpose of or likely to induce, directly or indirectly, the rendering of professional services or furnishing of products in connection with the professional practice or business for which he or she is licensed. A "public communication" as used in this section includes, but is not limited to, communication by means of television, radio, motion picture, newspaper, book, or list or directory of healing arts practitioners.

(b) A false, fraudulent, misleading, or deceptive statement or claim includes a statement or claim which does any of the following:

- (1) Contains a misrepresentation of fact.
- (2) Is likely to mislead or deceive because of a failure to disclose material facts.
- (3) Is intended or is likely to create false or unjustified expectations of favorable results.
- (4) Relates to fees, other than a standard consultation fee or a range of fees for specific types of services, without fully and specifically disclosing all variables and other material factors.
- (5) Contains other representations or implications that in reasonable probability will cause an ordinarily prudent person to misunderstand or be deceived.

(c) Any price advertisement shall be exact, without the use of such phrases as "as low as," "and up," "lowest prices" or words or phrases of similar import. Any advertisement which refers to services, or costs for services, and which uses words of comparison must be based on verifiable data substantiating the comparison. Any person so advertising shall be prepared to provide information sufficient to establish the accuracy of that comparison. Price advertising shall not be fraudulent, deceitful, or misleading, including statements or advertisements of bait, discount, premiums, gifts, or any statements of a similar nature. In connections with price advertising, the price for each product or service shall be clearly identifiable. The price advertised for products shall include charges for any related professional service, including the dispensing and fitting services, unless the advertisement specifically and clearly indicates otherwise.

(d) Any person so licensed shall not compensate or give anything of value to a representative of the press, radio, television, or other communication medium in anticipation of, or in return for, professional publicity unless the fact of compensation is made known in that publicity.

(e) Any person so licensed may not use any professional card, professional announcement card, office sign, letterhead, telephone directory listing, medical list, medical directory listing, or a similar professional notice or device if it includes a statement or claim that is false, fraudulent, misleading, or deceptive within the meaning of subdivision (b).

(f) Any person so licensed who violates any provision of this section is guilty of a misdemeanor. A bona fide mistake of fact shall be a defense to this subdivision but only to this subdivision.

(g) Any violation of any provision of this section by a person so licensed shall constitute good cause for revocation or suspension of his or her license or other disciplinary action.

(h) Advertising by any person so licensed may include the following:

(1) A statement of the name of the practitioner.

(2) A statement of addresses and telephone numbers of the offices maintained by the practitioner.

(3) A statement of office hours regularly maintained by the practitioner.

(4) A statement of languages, other than English, fluently spoken by the practitioner or a person in the practitioner's office.